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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(roster)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 July 1991]

LEGAL AND INSTITUTIONAL ASPECTS OF THE RELATIONSHIP
BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

1. The Natural Heritage Institute (NHI), 1/ in conjunction with Human Rights Advocates (HRA), 2/ submits the following intervention to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. The rapidly deteriorating state of our environment is already well known. A particularly unsettling aspect of humankind's destruction of the Earth's environment is the exploitation and degradation of human beings as part and parcel of the exploitation and degradation of natural resources. The

United Nations Commission on Human Rights encouraged the Sub-Commission to investigate the link between human rights and the environment. 3/ The Sub-Commission appointed Mrs. Fatma-Zhora Ksentini to undertake the investigation. Her efforts reveal that many instruments have been adopted by international, regional and national bodies to strengthen environmental protections to avoid human impacts. However, it is uncertain whether potential victims can use these documents as a legal basis to prevent the environmental threats to their lives, health, livelihood and culture, or to seek redress for injuries.

3. Accordingly, this intervention supports the Sub-Commission's investigation and recommends that it identify the means to strengthen both the substantive and procedural aspects of international, regional and local laws and institutions to protect the human rights of environmental victims, including providing victims with a forum to challenge arbitrary State action. Measures should be developed to reinforce the public's rights to receive information about and to participate in environmental decisions of Governments.

Introduction

4. Today's environmental problems are extremely complex. They are the by-products of natural resource, industrial and agricultural development. Inefficient energy use and negligent waste-disposal practices contribute to this dilemma. Environmental harm can give rise to human rights violations when the harm results in death, disease, emotional deterioration, or the impairment of one's livelihood or culture.

5. Environmental disasters can result from natural phenomena, such as hurricanes and flooding, though human-induced watershed erosion, desertification, and other environmental mismanagement can increase the level of harmful impacts. Often these disasters occur as a direct result of human activities, such as the manufacture and distribution of toxic chemicals, generation of nuclear power, disposal and transport of hazardous waste, and development of natural resources (oil, minerals, water, forests).

6. The Chernobyl nuclear power plant and Bhopal toxic chemical releases are stark reminders that human exposure to hazardous materials can cause death and impair human health. Thousands lost their lives during these catastrophes and even more still suffer the physical, mental and economic effects of the toxic exposure. The Exxon Valdez oil spill also reminds us that environmental destruction can also destroy the livelihood of communities dependent upon that environment, especially those employed in the fishing industry which is most directly affected by marine pollution. More poignantly, the Penans in Sarawak, Malaysia, are suffering the consequences of the 24-hour-a-day logging of the rain forest that serves as their dwelling, and supplies their livelihood, medicines and cultural identify. These losses have forced them to relocate to shanty towns where they have contracted diseases and experience other physical and emotional disabilities. 4/

7. Development projects have had similar consequences. For example, the construction of large dams can cause the spread of disease to local populations, especially when the standing forests are not cleared before creating a reservoir. Common disease epidemics brought on by the construction

of dams include malaria, schistosomiasis and onchocerciasis or river blindness. 5/ River blindness reportedly affected 70,000 people after the construction of the dams in the Volta River region of Africa. 6/ Particularly affected are the indigenous peoples who have not built up immunities.

8. In addition, the exploitation and degradation of natural resources has created a new human phenomenon: "environmental refugees". This category of refugee is comprised of persons fleeing environmental disasters, areas undergoing habitat changes, such as desertification, or contaminated by toxic or hazardous waste. 7/ It is estimated that these refugees are now the largest group of displaced persons in the world, and their numbers are growing. 8/ Approximately 135 million people live in areas undergoing such severe desertification that they will suffer economic hardship and be forced to migrate to already overcrowded urban areas. 9/ One report indicates that the largest number of these refugees reside in Africa. 10/ India has also experienced a tremendous rise in such displaced persons. Approximately 20 million people in India have been "ousted" from their homes since 1947 because of officially sponsored development projects, such as dams and mining, and others have been displaced by the land degradation and pollution caused by these projects. 11/ Furthermore, it is estimated that, during the next century, when the sea level is expected to rise by 1 metre, millions of people will be forced to flee their coastal communities; 50 million people may become refugees from this event. 12/

Human rights implicated by environmental problems

9. The right to life, 13/ universally accepted as a fundamental human right, has been interpreted to include the duty of a State to protect potential victims from life-threatening environmental catastrophes that could occur from acts under its jurisdiction or control. 14/

10. The right to health, declared in treaties and other international instruments, may also impose similar duties upon States. Certain international documents and State constitutions declare a "right to the environment", though the definition of this right is uncertain. 15/ In addition, the loss of livelihood and culture violates rights prescribed in the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights. 16/

Right to information and participation in environmental decisions

11. Important aspects of this issue which must be included in any discussion of the problem are the rights to receive information on government-approved activities and to participate in government decisions that could pose environmental threats to the public. These rights are fundamental to the enjoyment of all other rights, especially because communities that do not know of potentially hazardous threats cannot protect themselves from the risk of harm. It can be maintained that environmental quality and use of environmental resources cannot be sustainable without freedom of information.

12. The General Assembly stated at its first session that

> "[f]reedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated; [f]reedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters ..." (resolution (I) of 14 December 1946).

13. Article 19 of the Universal Declaration reaffirms the right of everyone to seek, receive and impart information and ideas through any media regardless of frontiers. 17/ This confers on individuals and NGOs the right to report on government actions. Safeguarding this right is crucial in providing the public with the means to evaluate the public health and safety risks of any project. An informed public could prevent an ill-conceived project from progressing until it is proven to be safe, lobby for regulation of hazardous facilities to decrease the likelihood of accidents and take other such steps to protect itself from harm.

14. This knowledge must be coupled with a right to participate in government decisions that pose environmental threats. Public accountability of any project likely to threaten the survival or livelihood of a community is necessary because it provides the community with an opportunity to independently evaluate the risks and voice concerns regarding the health and safety, technical and economic impacts of a project. The General Assembly has recognized that popular participation is necessary for meaningful socio-economic development and the Commission on Human Rights has received comments on the subject. 18/ The World Commission on Environment and Development, in its report "Our Common Future" (UNEP/GC.4/13, April 1987), concluded that the first stated prerequisite of sustained development is a political system that secures effective citizen participation in decision-making and recommended establishing the right of citizens to take part in environmental decisions. 19/ This is important because individuals, groups and indigenous peoples are generally restricted by many countries from this type of participation. 20/ Furthermore, public involvement in the management of environmental problems can reduce the risk of political, economic and cultural conflict.

Recommendations to the Sub-Commission

15. Resolve that the Special Rapporteur continue her investigation of this subject, especially identify the means to strengthen both the substantive and procedural aspects of international, regional and local laws and institutions to protect the human rights of environmental victims. An important focus of this should be the public's rights to receive information of potential environmental threats and to participate in governmental decisions.

16. Investigate the development of an independent body of environmental human rights experts to hear complaints of and provide for redress to individuals and groups regarding violations of their human rights from environmental harm.

17. Establish a working group to investigate the environmental human rights abuses occurring worldwide and report to the Sub-Commission on interpretation of the rights and responsibilities of nations, individuals and groups

regarding environmental human rights, including the rights of displaced persons living within their own countries, and the public's rights to information and participation in government decision-making processes.

18. Coordinate efforts with intergovernmental agencies and other bodies expert on these issues, including the United Nations Environment Programme, United Nations Development Programme, United Nations Conference on Environment and Development, United Nations Centre on Transnational Corporations, United Nations Educational, Scientific and Cultural Organization, the International Labour Organisation and the Committee on Economic, Social and Cultural Rights.

Notes

1/ The Natural Heritage Institute is a non-profit, non-governmental organization which provides counselling and advocacy for public interest organizations and government institutions on natural resource problems, including international conservation and human rights.

2/ Human Rights Advocates is a non-governmental organization which provides education to the public on their human rights and advocates protection of those rights in international and other fora. It is in consultative status with the Economic and Social Council (category II).

3/ Commission on Human Rights resolution 1990/41 of 6 March 1990.

4/ See HRA/NHI submission to the Sub-Commission, "Destruction of the Rain Forest in Sarawak, Malaysia, and the Penan, an Indigenous People in Peril" (E/CN.4/Sub.2/1990/NGO/22).

5/ Brown & Doem, "Health Aspects of Manmade Lakes", in Ackerman, White & Worthington (eds.), Man Made Lakes, Their Problems and Environmental Effects, Geophysical Mono. No. 17 (Washington D.C., Am. Geo. Union) (1973); Cummings, Dam the Rivers, Damn the People (World Wildlife Fund 1990).

6/ Graham, "Ghana's Volta Resettlement Scheme" in Goldsmith & Hildyard, The Social and Environmental Effects of Large Dams, vol. I & II (Wadebridge Eco. Ctr., Cornwall, United Kingdom, 1986).

7/ In the United States thousands of families have been forced to relocate because of toxic exposure threats. Jacobson, "Environmental Refugees: A Yardstick of Habitability", Worldwatch Paper No. 86 (1988).

8/ Ibid.

9/ Ibid., p.11.

10/ It is estimated that most of these come from countries between Mauritania and Senegal, through the Sudan. Ibid., pp. 11-14.

11/ Maloney, "Environmental and Project Displacement of Population in India. Part I: Development and Deracination", Universities Field Staff International, No. 14 (1990-91).

12/ Jacobson, op. cit.

13/ Universal Declaration of Human Rights, art. 6; International Covenant on Civil and Political Rights.

14/ Kiss & Shelton, International Environmental Law (1991).

15/ See, e.g., article 24 of the African Charter on Human and Peoples' Rights (Nairobi, June 1981); P. Gormley, "The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms", 3 Geo. Int'l L. Rev. 85 (1990).

16/ Arts. 23, 25, 27 of the Universal Declaration of Human Rights; arts 6, 11, 12, 15 of the International Covenant on Economic, Social and Cultural Rights.

17/ The United Nations Educational, Scientific and Cultural Organization (UNESCO) General Conference adopted by consensus a resolution which stressed that the elimination of informational inequities requires Governments to remove the internal and external obstacles to the free flow and wider dissemination of information and ideas. Resolution 21 C/4.19 of the General Conference of UNESCO at its twenty-first session (Belgrade, October-November 1980).

18/ See United Nations document A/38/338 (Study on Popular Participation) and Commission on Human Rights documents E/CN.4/1984/12 (Question of Popular Participation), E/CN.4/1985/10, E/CN.4/1986/11, E/CN.4/1987/21, E/CN.4/1988/11, E/CN.4/1989/11, E/CN.4/1991/11.

19/ The Convention on the International Right of Correction, annexed to General Assembly resolution 630 (VII) of 16 December 1952, indicates that contracting States should implement the right of their peoples to be fully and reliably informed, and to improve understanding between their peoples through the free flow of information.

20/ The lack of national institutional structures and legal protective agencies in developing countries and corruption by those in authority positions hinder the achievement of participatory democracy. See, e.g., Cummings, supra.

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Forty-third session
Item 6 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (roster)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 July 1991]

1. We are compelled to raise the situation in Tibet. There is reliable evidence that the Tibetan people, who have borne alien domination for more than 40 years, continue to suffer a systematic pattern of gross human rights abuses. These reported abuses pertain to collective and individual rights; permeate virtually every aspect of daily life; and touch Tibetan men, women and children alike.

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2. The key human rights issue in Tibet today is deprivation of the Tibetan people's right to self-determination. The United Nations has long recognized the right of peoples to "freely determine, without external interference, their political status and freely pursue their economic, social and cultural development" (Resolution 2625 (XXV)). This collective right is deemed a "prerequisite to the full enjoyment of all fundamental rights" (General Assembly resolution 637 A (VII)). The right to self-determination of the Tibetan people is recognized in General Assembly resolution 1723 (XVI).

3. Yet there is persistent evidence that Tibetans are denied this fundamental right. The gravest illustration of this denial is what some reports characterize as a deliberate policy of population transfer. Since occupying Tibet in 1949-1950, the People's Republic of China is reported to have imposed its own political and economic system on Tibetans. According to some reports, the People's Republic of China is furthering this goal through the transfer of Chinese into Tibetan territory. Both Tibetans and outside observers have voiced alarm at the imminent prospect that Tibetans will become a minority in their own country. Further, there is credible evidence that the arrival of large numbers of Chinese settlers and troops has produced Tibetan "ghettoes" in the principal cities, resulting in inflation and unemployment for Tibetans. This population transfer is reported to have resulted in a de facto system of discrimination in housing, education and health care (See Asia Watch, Human Rights in Tibet (February 1988); ..., Merciless Repression: Human Rights in Tibet (May 1990)).

4. Denial of Tibetans' right to self-determination is demonstrated by numerous human rights abuses. Tibetans are systematically denied the right of peaceful expression guaranteed by article 19 of the Universal Declaration of Human Rights (UDHR). There are persistent, credible reports that Tibetans are being arbitrarily detained, tortured in custody, and even executed for peaceful protest against the People's Republic of China's occupation of Tibet, in violation of articles 9, 5, and 3 of the Universal Declaration of Human Rights (Asia Watch, Evading Scrutiny: Violations of Human Rights After the Closing of Tibet (July 1988); ..., Merciless Repression (May 1990); Physicians for Human Rights, The Suppression of a People; Accounts of Torture and Imprisonment in Tibet (November 1989); Amnesty International, People's Republic of China: Torture and Ill-treatment in Detention of Tibetans (February 1989, ASA 17/04/89)). For example, in spring of 1989 Tseten Norgye was reported to have been arrested in Lhasa after police searched his house and found a mimeograph machine allegedly used to print literature advocating independence (Amnesty International Urgent Action (2 November 1989, ASA 17/96/89)). Yulu Dawa Tsering was reportedly arrested in late 1987 or early 1988 for discussing Tibetan independence and criticizing Chinese policies (International Alert, Tibet in China (London August 1988)). It has been reported that Ngawang Phhulchung was imprisoned for "counter-revolutionary activities" which included, in part, translation of the Universal Declaration of Human Rights into Tibetan (Lawasia and Tibet Information Network, Defying the Dragon (March 1991)).

5. There is evidence that Tibetans are denied freedom of peaceful assembly, which is guaranteed by article 20 of the Universal Declaration of Human Rights. The Venerable Thupten Tsering was reportedly arrested by security officers for associating with his brother, who was visiting from abroad with

an Italian friend (International Alert, Tibet in China (London August 1988)). There is reliable evidence that in May 1991 three monks were detained after shouting pro-independence slogans in Lhasa (Tibet Information Network, "Attempted Protest in Lhasa" (18 May 1991)). There have been reports of excessive force by Chinese security forces on groups of Tibetans assembled peacefully to demonstrate for independence. A former Chinese government journalist has claimed that the Beijing Government encouraged security forces in Lhasa to shoot demonstrators in March 1989 (The Observer, "The secret massacre" (12 August 1990)). Eyewitnesses claim that in May 1991 a Tibetan monk was fatally stabbed by a policeman during a pro-independence demonstration (Kyodo News Service, "Asian News: Anti-Chinese Demonstrations Reported in Lhasa" (4 June 1991)).

6. There is credible evidence that Tibetans are routinely denied freedom of exercise of religion, a right guaranteed by article 18 of the Universal Declaration of Human Rights. It is reported that virtually all of Tibet's religious infrastructure has been destroyed during the People's Republic of China's occupation of Tibet, but only a limited number of temples and monasteries have been rebuilt. There is evidence that the People's Republic of China controls religious practice in Tibet, from the induction of new monks and nuns, to political supervision of monasteries through monitors and informers, to restriction of the reconstruction of religious buildings (International Campaign for Tibet, Forbidden Freedoms: Beijing's Control of Religion in Tibet (September 1990); Lawasia and Tibet Information Network, Defying the Dragon (March 1991); Asia Watch, Merciless Repression (May 1990)). Claims of religious repression and the arrest and ill-treatment of monks and nuns have been set forth in the Report of Special Rapporteur Mr. Angelo Vidal d'Almeida Ribero (E/CN.4/1990/46)).

7. Beginning in 1987 there have been increasing reports alleging a pattern of deliberate torture of political prisoners, in violation of Universal Declaration of Human Rights article 5 and the People's Republic of China's obligations under the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment. These have included reports of torture by electric shock, by hanging and by immersion in freezing water, as well as reports of sexual abuse of nuns and lay women (Report of Special Rapporteur Mr. P. Kooijmans (E/CN.4/1990/17); Physicians for Human Rights, The Suppression of a People (November 1989); Amnesty International, Torture and Ill-Treatment, Special Report (London 1989); Lawasia and Tibet Information Network, Defying the Dragon (March 1991); S.O.S. Torture, "Torture Commonplace in Tibet's Prisons" (August/September 1989)).

8. There are persistent, reliable reports of summary executions and deaths from torture, in violation of Universal Declaration of Human Rights articles 3 and 5, and article 6 of the International Covenant on Civil and Political Rights (Reports of Special Rapporteur Mr. S. Amos Wako (E/CN.4/1989/25 and E/CN.4/1990/22); Amnesty International, "Torture and Ill-Treatment", Special Report (London 1989)). It has been reported that Tibetans Yeshi and Tenpa Choephel died in 1989 from mistreatment while in custody (Tibet Information Network, "Death from prison injuries" 24 and 25 August 1990)). It has been claimed that in December 1990, 20-year-old Lhakpa Tsering was beaten to death after being imprisoned for putting up pro-independence posters (Tibet Information Network, "Prison Death: Evidence of Abuse" (4 March 1991)).

9. There is reliable evidence that human rights abuses in Tibet reach across all levels of Tibetan society, and touch even children. Since late 1989 Radio Lhasa has reported the arrest and sentencing of Tibetan children for pro-independence activities (Asia Watch, Merciless Repression (May 1990); Amnesty International, "One Year Under Martial Law" (March 1990, ASA 17/10/90)). It has been reported that Lhakpa Tsering, a 14-year-old boy, was sentenced to two years' imprisonment for making pro-independence leaflets at his school (Tibet Information Network, "14-Year-Old Gets 2 Yrs in Prison" (15 November 1990)).

10. There is evidence that Tibetan human rights monitors face punishment for their monitoring activities. It has been reported that in September 1989, Tibetan Ngodup was sentenced to 11 years' imprisonment and 4 years' deprivation of political rights for collecting what appears to be basic human rights data (Lawasia and Tibet Information Network, Defying the Dragon (March 1991)).

11. There are reports that the People's Republic of China is exploiting and exporting the natural resources of Tibet without popular participation in Government decision-making, in violation of the internationally recognized rights to life and health.

Conclusion

12. The question of Tibet has been brought before the Sub-Commission repeatedly, both in the 1960s and more recently. In light of the apparently accelerating pattern of serious human rights violations, it is urgent that the Sub-Commission act now. Human Rights Advocates respectfully suggests that the best course is for the Sub-Commission to appoint a Special Rapporteur to study and report accurately the situation in Tibet.

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Item 15 of the provisional agenda

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by the Indian Law Resource Center, a non-governmental organization in consultative status (roster)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[1 August 1991]

1. The Yanomami Indians of Brazil continue to be devastated by disease and malnutrition as the result of the invasion of their land by gold miners. But the President of Brazil is now taking significant steps toward removing the miners, providing health care and protecting the Yanomami territory. The positive steps now being taken are no doubt due in part to the constructive and humanitarian role of the Chairman-Rapporteur of the United Nations Working Group on Indigenous Populations, to the personal intervention of the United Nations Secretary-General and to the support of various offices and agencies of the United Nations.

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2. Although important steps are now being taken by the Brazilian Government, these steps will not stop the dying and the suffering of the Yanomami unless the Government takes further concrete measures to demarcate the Yanomami land, to remove all the gold miners and to provide ongoing medical services. The President of Brazil must be supported and encouraged to take the further necessary steps.

Background

3. The Yanomami are perhaps the most isolated major group of Indians in the Americas, having remained almost without contact until the last several years. They live in widely scattered villages or maloccas in the far north of Brazil, in the northern reaches of the Amazon rain forest. There are now perhaps eight or nine thousand Yanomami living in Brazil.

4. In 1987, despite Government promises to demarcate and protect the Yanomami territory, thousands of gold miners were permitted to invade the Yanomami lands. Within two years, some 45,000 gold miners, or garimpeiros, were in the Yanomami lands, in complete violation of Brazilian law, but with the sometimes-active assistance of elements in the Brazilian Government. The Government barred from the area medical personnel and others who could help the Yanomami, reducing medical service to almost nothing.

5. The gold miners brought with them malaria and a host of other diseases to which the Yanomami have no resistance and no means of treatment. The rivers were and still are torn up, polluted and poisoned with mercury, the Yanomami's natural food sources were poisoned or destroyed, as were the forests along the rivers in the mining areas.

6. Soon Yanomami began to die from malaria and the other diseases brought by the miners and from the effects of malnutrition. Many entire villages simply disappeared due to the deaths of the inhabitants. No one knows the actual number of Yanomami that have died as a result of the invasion, but informed estimates are that the toll is 1,500 to 2,000. These four years of horror have been described by experts as genocide.

The present situation

7. In April of this year, Davi Kopenawa Yanomami told of a recent visit he had made to a very remote area, where he had assumed the people were safe from the diseases of the miners. To his horror, he found that many villages there had completely perished from the diseases - everyone dead, without any medical care and the world unaware of their passing.

8. Slowly and fitfully the Government, a year and a half ago, began to make efforts to remove the garimpeiros and to deal with the health problems. The number of gold miners in the area was greatly reduced, but thousands of gold miners have continued to reinvade the area. Recently, federal police estimated that at least 8,000 garimpeiros remained in the central Yanomami area alone. Much greater effort will be required to remove all of them and to prevent their return.

9. According to a Brazilian newspaper, the Government destroyed some 49 airstrips used by the miners out of a total of about 120. Of the 49 destroyed, 20 have already been repaired and are in use again. In June Davi Kopenawa flew with Governmnt officials over a large part of the Yanomami territory and observed many of these airstrips in use and mining going on in many areas. In the region of the Uraricoera River, for example, he observed at least 60 rafts used for dredging the river. Others have seen as many as 100 rafts in that area alone.

Malaria continues out of control

10. Though some medical service is now being provided, the health situation continues to be precarious. National Health Foundation personnel reported that in May 70 per cent of the population in the Surucucus area was diagnosed as having malaria. In the Xidea area 40 per cent have malaria. In the Homoxi area it is 67 per cent, and at Paapiu 46 per cent of the Yanomami have malaria. Another observer at Paapiu found 50 per cent with malaria, and half of these cases were the Falciparum strain, which is often fatal. The National Health Foundation reports that 90 per cent of all deaths of Yanomami are caused by malaria - a result of the invasion of the miners. Hospitalizations for malaria have increased by 50 per cent, we are told, since January of this year.

11. The health project developed this year is a good one, but it has not been carried out as it should be. There is a great need for additional funds.

12. Davi Kopenawa Yanomami recently reported to the National Health Foundation about the tragic situation of most of the Yanomami villages. He said:

> "The villages close to the Surucucus Hospital are up to eight hours' walk through mud and knee-deep water. The others are many days walk. ... The people who are in the hospital came walking through the forest, the sickest ones were carried for days, and many died on the way."

He emphasized the special need for helicopters to enable the medical teams to reach the villages. He said:

> "I am still very worried because the gold prospectors are returning to invade Yanomami lands, bringing diseases and rebuilding the landing strips in the gold-mining areas. With the return of the gold prospectors, and even more so without helicopters, my people will continue to die."

Positive Government measures: more is needed

13. In April a number of very favourable steps were taken by the Brazilian Government:

1. The two decrees that had created an archipelago of 19 separate islands of Yanomami lands and drastically reduced their land area were revoked.

2. The Government also revoked the decrees that had created three gold-mining reserves in the Yanomami territory.

3. The Ministry of Justice, by decree, closed the entire Yanomami area to all invaders for a period of six months during which time the demarcation of the Yanomami area would be studied.

In June, President Fernando Collor de Mello again ordered federal police to expel the gold miners from the Yanomami land in compliance with an earlier Federal Court decision. Only a few days ago, funds were released to permit the police to take action. Officials point out that much more money will be needed to remove all the gold miners and to prevent their return.

14. The Government also agreed to accept the United Nations offer of assistance. Secretary-General Javier Pérez de Cuéllar wrote to President Collor offering "humanitarian aid" through UNICEF, WHO and the ILO, and expressing concern for the survival of the Yanomami despite the positive steps taken by the President. In April, the Secretary-General met privately with Davi Kopenawa to review the situation, and he promised assistance at that time. This extemely important and unprecedented meeting has helped to demonstrate the worldwide concern for the survival of the Yanomami and the urgency of supporting all efforts to stop the invasion of the Yanomami land and to provide the medical care necessary to stop the dying from malaria and other diseases.

15. On Monday, 22 July, FUNAI, Brazil's national Indian agency, made an official statement and recommendation, or paracer, calling for the demarcation of the entire Yanomami area of 9.4 million hectares. This decision is based upon a study ordered by President Collor by anthropological and legal experts. The land area recommended is the same as the traditional land area recognized by the Federal Court and by the Inter-American Commission on Human Rights. It is the area that the Commission for the Creation of the Yanomami Park and practically all other experts and human rights advocates have urged the Government to demarcate.

16. After a 30-day period for public comment, this recommendation will be submitted for final approval by the President.

17. There has been a storm of opposition from the mining interests, from leaders of the garimpeiros and from the governors of the three States in the region. Unless President Collar can withstand this criticism and carry through with his apparent intention to demarcate and protect the area, all the recent positive steps will be entirely ineffective.

18. Not only must the President approve the demarcation, but there must be created a comprehensive scheme for the total protection to the Yanomami territory. This will have to include demarcation and policing to prevent reinvasion, much-increased health services with helicopters, environmental restoration and environmental protection.

19. Gross human rights violations, even genocide, can and do occur in situations such as this, where powerful private interests trample upon human lives, act in defiance of national laws and exert their political and economic

power to prevent or delay government action to protect the victims. Just as it is our duty to monitor and criticize the performance of Governments in the observance and protection of human rights, it is also our duty to give support and encouragement to genuine government measures for the protection of human rights. We should give every possible support to the President of Brazil and to all those who are now working to stop the destruction of the Yanomami and to protect their traditional territory. They should have our encouragement in opposing those who value gold more than the lives of the Yanomami and more than the preservation of the rain forest and the rivers. We must continue to observe and report whether the Government realizes and implements the positive measures that have been begun.

20. We must also continue to give attention to the problems that have not been sufficiently addressed. The Calha Norte Project calling for integration and economic development of the northern frontier region continues to be a major problem, because development and settlement of the area - particularly the Yanomami area - are destructive of the rain forest ecosystem and, even more important, destructive of the Yanomami people themselves. This situation calls for ongoing attention and it dramatizes the need for Indian and other indigenous peoples to be able to participate directly and fully in the United Nations Confernece on the Environment and Development in 1992.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[5 August 1991]

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A. Water for the Palestinians

1. Since the war of June 1967, the West Bank and the Gaza Strip have been occupied by the Israeli armed forces. A distinctive and distressing aspect of this occupation is the occupying Power's claim that the territory captured by force of arms, that is the remaining 20 per cent of the historical land of Palestine, is part of "Eretz Yisr'il", and the implementation of this claim by the systematic seizing of private Palestinian property and the use of such property mainly for the purpose of establishing and expanding Jewish colonies in the occupied territories.

2. In this context, the International League for the Rights and Liberation of Peoples wishes to direct attention towards the exploitation of water resources for the benefit of Jewish colonies in the occupied territories with respect to the United Nations resolutions on the permanent sovereignty over natural resources of the occupied Palestinians, to the exercise of their rights and to the obligations of Israel as an occupying Power.

General situation in brief

3. Israel's water policy in the occupied territories is a natural sequel to its broader designs of colonizing and ultimately annexing these territories. Water in the occupied territories, however limited, is practically the only natural resource that Palestinians have.

4. Israel has issued several military orders to govern and control water resources in the West Bank and the Gaza Strip (Water Legislation, Military Order No. 92, 7 June 1967; No. 158, 29 December 1967; No. 291, 22 June 1969; No. 457, 12 September 1972, No. 498, 4 November 1974). Since its occupation of the West Bank, Israel has issued to Palestinians only five permits to drill new wells. Meanwhile it has issued to Jewish settlers some 25 permits to drill to a depth of 300-500 metres. The production capacity of the wells belonging to Jewish settlements is equal to about 40 per cent of the amount of water produced by a total of some 330 wells in the West Bank. At the time of the occupaton, there were approximately 720 wells in the West Bank; about 330 are still working, the others having dried up and/or been destroyed.

5. Within its pre-1967 borders, Israel was able to tap about one third of its annual water needs (600 million cu m) from the West Bank aquifer. Such overpumping has affected the quality and pressure level of Palestinian wells.

6. Israel now meets a full 30 per cent of its entire water needs by direct extraction and diversion from West Bank sources. This represents 80 per cent of West Bank reserves. As if the picture was not grim enough, a new threat is looming with the massive influx of Soviet Jewish immigrants to Israel. Even if they are not immediately settled in the occupied territories, the Israeli Water Authority estimates that the arrival of 3 million of them would raise annual demand for water by 650 million cubic metres (cu m).

7. The Minister of Agriculture of Israel, Rafael Eitani, asserted that Israel needed West Bank water and claimed that withdrawal from the occupied territories would endanger its very survival (advertisement published in the Jerusalem Post on 10 August 1990).

8. Under the Israeli quota system, Palestinian inhabitants of the West Bank receive only a fraction of the water allowed to the Israelis: 115-142 cubic metres per person, in contrast to 537 cubic metres per person in Israel proper and a staggering 965 cubic metres per Israeli settler in the West Bank itself. The effect is to limit Palestinian water consumption to 20 per cent of the resources available in the West Bank.

9. Besides the capping of wells, other Israeli controls limit Palestinian water consumption. Palestinians have to pay twice as much for their water, and farmers receive none of the subsidies that their Israeli counterparts enjoy. more seriously, not only is the digging of new artesian wells or the restoration of old ones illegal without prior permission from the military authorities, but permits must be obtained before simple rainwater catchments can be constructed. Even primitive collection ponds in village squares are restricted by the Israelis, supposedly in the name of preserving nature and the environment.

10. Israel controls the West Bank underground water supplies, thus achieving two objectives: providing water for the Jewish colonies and for Israel proper.

11. In some areas the control is man-made, as in the Bureij refugee camp, in the Gaza Strip, where hundreds of homes no longer receive drinking water. The Israeli authorities have simply cut off the supply, on the pretext that many bills are unpaid or payments uncollected following the resignation of the local council. Every day, camp residents form long queues at a petrol station one kilometre away where there is a water pump, or fill jerry-cans from donkey-drawn tankers on the beach.

12. The abuse and illegal use by the occupying Power of the occupied territories has been a cause of concern at the United Nations. In its resolution 36/173 of 17 December 1981, the United Nations General Assembly requested the Secretary-General to prepare a report on the implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources in the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in these territories.

B. The principle of permanent sovereignty of peoples and nations over their resources

13. The principle of permanent sovereignty over natural resources found its first expression in the United Nations during the early 1950s in the parallel fields of economic development and human rights. On the economic side, the General Assembly, acting on reports of its Second Committee, adopted resolution 523 (VI) of 12 January 1952 and, more particularly, resolution 626 (VII) of 21 December 1952, in which it recalled that the right of peoples freely to use and exploit their natural wealth and resources was in their sovereignty and was in accordance with the purposes and principles of the Charter of the United Nations.

14. At its twenty-seventh session in 1972, the General Assembly, acting on the report of the Special Political Committee affirmed in its resolution 3005 (XXVII) "the principle of the sovereignty of the population of the occupied territories over their natural wealth and resources" (para. 4).

15. The General Assembly later reaffirmed that all measures undertaken by Israel to exploit the human, natural and all other resources, wealth and economic activities in the occupied territories were illegal and called upon Israel to desist immediately from such measures (resolutions 37/135, 36/173, 35/110, 34/136 and, with variations, 31/186, 3236 (XXIX) and 3171 (XXVIII).

C. The law of belligerent occupation

16. The primary principle on which the law of belligerent occupation rests is that the occupation does not bring about any acquisition or transfer of sovereignty. Sovereignty remains where it was before the occupation, although its exercise may be suspended when it conflicts with the rights of the occupant.

17. Both the principle of permanent sovereignty and the law of belligerent occupation have as an important purpose the protection of sovereign rights over land and other natural resources. In addition they lay upon the occupying Power the responsibility for internationally illegal acts.

D. Implications of United Nations resolutions

18. In the light of what precedes, the following implications of United Nations resolutions on the permanent sovereignty over natural resources for the occupied Palestinian territories and for the obligations of Israel concerning its conduct in those territories might be considered.

(a) The primary right of peoples and nations to permanent sovereignty over their natural resources is the right freely to use, control and dispose of such resources. The full exercise of this right by the Palestinian people can only take place with the restoration of its control over the occupied territories.

(b) The second implication is that control over land, water and other natural resources should be restored to the local population.

(c) A third implication would be that the occupying Power is under an obligation not to interfere with the exercise of permanent sovereignty by the local population.

(d) A fourth implication would be the strengthening of the protection of the natural resources of the occupied territories afforded by the law of belligerent occupation. In any event such resources could not be used by the occupying Power beyond the limits imposed by the Regulations concerning the Laws and Customs of War on Land annexed to The Hague Convention of 18 October 1907 and the Geneva Convention, relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

(e) A fifth implication would be to reinforce a right under international law to reparation for any loss or damage to natural resources suffered as a result of violations of the rules of belligerent occupation.

Any tampering with the wealth and natural resources of the Palestinian population would necessarily frustrate their objective of establishing their own State and would render their claim to self-determination meaningless.

19. For 24 years, the Palestinians have been waiting for justice to take its course. The United Nations must act now, as it is in a very strong position to take action and follow up its own resolutions. The intervention of the United Nations is a political necessity. Much more, such intervention is an international legal obligation. This obligation arises in the first place under Article 1, and Article 14 of the Charter.

20. The United Nations faces a choice: either uphold the Charter and use the coercive means that it has envisaged, or bow to the rule of force. The primary aim of the United Nations intervention must be to eradicate the injustice imposed on the Palestinian people.

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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

1. The International Federation of Human Rights (IFHR) and its affiliate organization, the Viet Nam Committee on Human Rights, are concerned that the Socialist Republic of Viet Nam is invoking articles in the Criminal Code relative to national security in order to arrest and detain citizens for the peaceful expression of their beliefs or for legitimate political or religious activities.

2. The Vietnamese Criminal Code (1986) and the Criminal Procedure Code (1988) contain a number of articles providing for the severe punishment of all

acts or intentions perceived to threaten State security. In the Criminal Code, 14 offences relating to national security may incur the death penalty as maximum punishment. "Actions that disrupt public security" (article 83), "causing divisions between the religious and non-religious and separating religious followers from the people's Government and social organizations" (article 81) and the "spreading of propaganda against the Socialist regime" (article 82) are all perceived as "especially dangerous crimes against national security".

3. The IFHR and the Viet Nam Committee are particularly concerned about the recent arrest of the novelist Duang Thu Nuang in Hanoi on 14 April 1991. She is charged with "collecting and sending out of the country documents harmful to State security" (Hanoi daily Nhân Dân of 1 May 1991). Under article 82 (c) of the Criminal Code, this offence is punishable by 10 to 12 years' imprisonment, or by life imprisonment or the death sentence under article 72 (1). The document which Duong Thu Nuong is accused of sending overseas does not contain State secrets or material harmful to national security; it is simply the manuscript of her latest novel, The Arch of Triumph, which is now in the possession of the Viet Nam Committee on Human Rights.

4. In 1990, following a series of declarations in favour of human rights, Duong Thu Huong was expelled from the Vietnamese Communist Party, and subsequently fired from her job as scriptwriter at the Film Unit Committee in Hanoi. The novel she had in publication was confiscated and banned. She and her family were subjected to intense psychological pressure, and she narrowly escaped three attempts on her life by agents of the Security Police. Duong Thu Huong is now under house arrest in a residence belonging to the Hanoi Ministry of the Interior. Her health is reportedly poor, and she is in need of treatment but refuses to be admitted to hospital for fear of a further attempt on her life. Her arrest constitutes a violation of article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of expression.

5. The IFHR and the Viet Nam Committee are concerned that many other writers are detained on charges relating to State security, particularly for sending manuscripts overseas. Writer Doan Quoc Sy, now 68 years old, is serving a nine-year sentence in Xuân Lôc re-education camp accused of intending to send manuscripts abroad. Poet Nguyen Chi Thien is detained in Ba Sao Camp, Ha Nam Ninh, after passing a manuscript of prison poems to a Western embassy in 1979. First arrested in 1958 for participating in the "Hundred Flowers" movement for freedom of expression, Nguyên Chi Thiên has spent over 30 years in prison, and has never been granted the right to a trial. He is in extremely poor health after such long detention. The long-term imprisonment without trial of Nguyên Chi Thiên violates article 9 of the ICCPR. The detention of writers suspected of sending manuscripts abroad is incompatible with article 19 (2) of the ICCPR which guarantees the right to "seek, receive and import information and ideas of all kinds, regardless of frontiers".

6. Article 74 (1) (c) of the Criminal Code defines it a crime to "supply information and documents which are not State secrets so they can be used by foreign countries against the Socialist Republic of Viet Nam". The IFHR and

The Viet Nam Committee believe this is inconsistent with the right of freedom of expression guaranteed in the Vietnamese Constitution (article 67) and with the provisions of the ICCPR.

7. In November and December 1990, a large number of journalists and writers were arrested in Viet Nam. They have not been formally charged, and in most cases their place of detention is not known. Journalist Le Van Tien (Nhu Phong), 68 years old, who suffers from a heart condition, was arrested in November 1990 on the eve of his legal departure to the United States; former Deputy Nguyen Mau, 76 years old, was arrested on 4 December 1990, and is reportedly being held at Bach Dang Prison No. 3; poet To Thuy Yen was arrested in December 1990; Doan Viet Hoat, former assistant rector of Van Hanh University, was arrested on 20 December 1990. Other writers and journalists arrested during this period include Vuong Duc Le, Ho Nam, Pham Thai Thuy, Chau Son, Pham Duc Kham, Nguyen Dan Que.

8. The IFHR and the Viet Nam Committee believe that these prisoners are denied access to relatives and legal counsel. Their detention is therefore a direct violation of principles 17 and 18 of the Body of Principles for Protection of All Persons under Any Form of Detention or Imprisonment.

9. The legislation under which these writers are being held has not been made public, but it is probable that they will be detained under article 17 of the Criminal Procedure Code which provides for temporary detention pending investigation. Article 71 stipulates that temporary detention "cannot exceed four months" for the most serious crimes, or two months for lesser crimes. However, article 71 (2) states that "when necessary, for crimes of particular danger to national security, the Chief Procurator (head of the People's Supreme Organ of Control) may further extend the period". As no time limit is stated the IFHR and the Viet Nam Committee fear that this may allow for indefinite detention without trial, and as such contravene articles 9 (1) and 9 (3) of the ICCPR which guarantee the security of person and the right of anyone arrested or detained to be "brought promptly before a judge or other officer authorized by law to exercise judicial power".

10. The Vietnamese official press gives substantial evidence of cases where pre-trial detention is well in excess of the stipulated two-to-four-month period. The Saigon magazine Tuôi Tre reported on 23 March 1991: "442 cases of excessive pre-trial detention were recorded in Chi Hoa (the Saigon Central Prison). In one case, the accused had been detained since 1984, in 11 other cases prisoners had been held since 1987, 12 others since 1988 and a further 142 since 1989 ... One major reason for excessive pre-trial detention is that people are frequently arrested without sufficient proof for charges to be made."

11. The IFHR and the Viet Nam Committee are equally concerned about the number of people detained under house arrest because of their beliefs or opinions. Article 61 of the Criminal Procedure Code empowers the authorities to arrest people "in order to promptly halt a criminal action, or when there is a basis for believing that the accused or defendant will create difficulties for the investigation, adjudication or prosecution, or will continue to commit crimes". Frequently, house arrest is in a place away from

home. Detainees are generally kept in total isolation and denied the right to receive visits and exchange correspondence. Nguyen Ho and Ta Ba Tong, respectively former chairman and vice-chairman of the "Club of Former Resistance Fighters" have been under house arrest in Ho Chin Minh City since May 1990 following the movement's call to accelerate political reforms.

12. Catholic priest Father Chân Tin and Catholic intellectual Nguyên Ngoc Lan were also placed under house arrest in Ho Chi Minh City on 16 May 1990, reportedly on charges of "causing divisions between the religious and the non-religious...". Father Chân Tin refused to sign an order of expulsion and house arrest presented by the security police, and was immediately arrested. Nguyên Ngoc Lan signed his three-year house arrest order under coercion and is now under permanent surveillance at his home. Indeterminate house arrest without charge is contrary to all international standards of law. It contravenes the Criminal Code (article 2) and the Criminal Procedure Code (article 10) which guarantee the right not to be deemed guilty or punished except by a court judgement that has taken legal effect. It also contravenes article 9 of the ICCPR.

13. Furthermore, the arrest and detention of Father Chân Tin and Nguyên Ngoc Lan for the peaceful expression of their religious beliefs violate article 18 of the ICCPR which guarantees the freedom of thought, conscience and religion, which is a non-derogable right (article 4 (2) of the ICCPR).

14. The IFHR and the Viet Nam Committee welcome the efforts of the Socialist Republic of Viet Nam towards economic reform. Nevertheless, the IFHR and the Viet Nam Committee are deeply concerned by the constant and systematic violations of human rights in this country, and strongly urge the Sub-Commission to examine the human rights situation in the Socialist Republic of Viet Nam during its forty-third session.